

ADAMS, J.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RICHARD BRADLEY,)	CASE NO. 4:07CV1246
)	
Petitioner,)	
)	JUDGE JOHN R. ADAMS
v.)	
)	<u>MEMORANDUM OF OPINION</u>
DAVID BOBBY, Warden,)	<u>AND ORDER</u>
)	
Respondent.)	

Petitioner *pro se* Richard Bradley filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, alleging six grounds for relief which challenge the constitutional sufficiency of his conviction for one count of kidnapping, with repeat violent offender specification. The fifth ground for relief is

Bradley was deprived of a fair trial when Mr. Bradley's court appointed Trial Counsel did not provide effective assistance of counsel, in contravention of the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

The sixth ground for relief is

Bradley was denied a fair trial pursuant to ineffective assistance of Appellate Counsel when Appellate Counsel did not seek available remedy from the Appellate Court to advance Mr. Bradley's appeal to the Ohio Supreme Court. Appellate Counsel did not assert to actions in the trial court proceedings that are clear violation of Mr. Bradley's due process rights, in contravention of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

On June 20, 2007, the case was referred to Magistrate Judge David S. Perelman for preparation of a report and recommendation pursuant to 28 U.S.C. § 636 and Local Rule 72.2(b)(2). *See* Order (Doc. 3).

On November 8, 2007, the respondent filed a Motion to Dismiss (Doc. 8). Respondent argues that the claim of ineffective assistance of appellate counsel presented in the sixth ground for relief has not been exhausted in state court pursuant to 28 U.S.C. § 2254(b) and (c), so that the petition must be viewed as a mixed petition.

On February 12, 2008, the Magistrate Judge submitted a Report and Recommended Decision (Doc. 12) recommending that the fifth ground for relief is barred from this Court's consideration and that the petitioner be granted the opportunity to amend his petition to delete the unexhausted sixth ground for relief. If the petitioner subsequently fails to amend his petition, the Magistrate Judge recommends that the petition be dismissed without prejudice as unexhausted.

Fed. R. Civ. P. 72(b) provides that objections to a report and recommendation must be filed within ten (10) days after service, but neither party has filed any such objections. Therefore, the Court must assume that the parties are satisfied with the Magistrate Judge's recommendation. Any further review by this Court would be a duplicative and inefficient use of the Court's limited resources. *Thomas v. Arn*, 728 F.2d 813 (6th Cir. 1984), *aff'd*, 474 U.S. 140 (1985); *Howard v. Secretary of Health and Human Services*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).

Accordingly, the Report and Recommended Decision of the Magistrate Judge is hereby adopted. The fifth ground for relief is dismissed. Richard Bradley is hereby given the opportunity to amend his petition to withdraw the unexhausted claim of ineffective assistance of appellate counsel. If the petitioner fails to amend his petition on or before April 21, 2008, by

deleting the sixth ground for relief, the petition will be dismissed without prejudice as unexhausted.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. §2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

March 20, 2008
Date

/s/ John R. Adams
John R. Adams
U.S. District Judge